

ESTTA Tracking number: **ESTTA707354**

Filing date: **11/09/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Intrexon Corporation
Granted to Date of previous extension	11/08/2015
Address	1872 Pratt Drive Suite 1400 Blacksburg, VA 24060 UNITED STATES
Attorney information	David L. May Nixon Peabody LLP 799 9th St. N.W., Ste. 500 Washington, DC 20001 UNITED STATES nptm@nixonpeabody.com, was.managing.clerk@nixonpeabody.com, larnold@nixonpeabody.com Phone:202-585-8000

Applicant Information

Application No	86471647	Publication date	05/12/2015
Opposition Filing Date	11/09/2015	Opposition Period Ends	11/08/2015
Applicant	Uptake Technologies, LLC Suite 775 Chicago, IL 60654 UNITED STATES		


Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: electric sensors
Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: arranging and conducting business conferences
Class 042. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: electronic monitoring and reporting of physical properties of an industrial asset using computers and sensors; data mining; electric sensor reading and data analysis; design and development of integrated data collection and wireless transmission hardware systems for equipment and for software applications associated with that equipment at industrial assets; data automation and collection service using proprietary software to evaluate, analyze and collect service data; providing on-line non-downloadable software for use in connection with each of the above services; providing on-line non-downloadable software for use in repair or maintenance of industrial assets; providing on-line non-downloadable software for use in industrial analytics; providing on-line non-downloadable software for use in industrial modeling

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85599384	Application Date	04/16/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	POWERING THE BIOINDUSTRIAL REVOLUTION WITH BETTER DNA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2015/04/14 First Use In Commerce: 2015/04/14 Development of new technology for others in the field of genetics, therapeutic-sand biotechnology; Development of toolsin the nature of biotechnological processes to regulate, modulate, and characterize cell function; Research and development services for others in the fields of biotechnology and genetics, namely, genetically engineering DNA, biological organisms, cells, viruses, pathogens, and special purpose cells for scientific, research, medical and laboratory use; Product development services for others in the biotechnology field		

Attachments	85599384#TMSN.png(bytes) Exhib A to Notice of Op.pdf(30161 bytes) Notice of Opposition (POWERING THE INDUSTRIAL EVOLUTION) 4837-5436-7530 v.1.pdf(172847 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Lauren J Arnold/
Name	Lauren J Arnold, Attorney for Opponent
Date	11/09/2015

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Mark: POWERING THE BIOINDUSTRIAL REVOLUTION WITH BETTER DNA

POWERING THE BIOINDUSTRIAL
REVOLUTION WITH BETTER DNA

US Serial Number: 85599384

Application Filing Date: Apr. 16, 2012

Register: Principal

Mark Type: Service Mark

Status: Review prior to registration completed.

Status Date: Oct. 16, 2015

Publication Date: Aug. 21, 2012

Notice of Allowance Date: Oct. 16, 2012

Mark Information

Mark Literal Elements: POWERING THE BIOINDUSTRIAL REVOLUTION WITH BETTER DNA

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Color(s) Claimed: Color is not claimed as a feature of the mark.

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Development of new technology for others in the field of genetics, therapeutics and biotechnology; Development of tools in the nature of biotechnological processes to regulate, modulate, and characterize cell function; Research and development services for others in the fields of biotechnology and genetics, namely, genetically engineering DNA, biological organisms, cells, viruses, pathogens, and special purpose cells for scientific, research, medical and laboratory use; Product development services for others in the biotechnology field

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Apr. 14, 2015

Use in Commerce: Apr. 14, 2015

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Amended Use: No

Filed ITU: Yes

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: Intrexon Corporation

Owner Address: 1750 Kraft Drive
Blacksburg, VIRGINIA UNITED STATES 240606375

Legal Entity Type: CORPORATION

**State or Country Where
Organized:** VIRGINIA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: David L. May

Docket Number: 048337-223

**Attorney Primary Email
Address:** nptm@nixonpeabody.com

**Attorney Email
Authorized:** Yes

Correspondent

Correspondent DAVID L. MAY
Name/Address: NIXON PEABODY LLP
401 9TH ST NW STE 900
WASHINGTON, DISTRICT OF COLUMBIA UNITED STATES 20004-2145

Phone: 202-585-8000

Fax: 202-585-8080

Correspondent e-mail: nptm@nixonpeabody.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Oct. 17, 2015	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Oct. 16, 2015	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Oct. 16, 2015	STATEMENT OF USE PROCESSING COMPLETE	66230
Oct. 09, 2015	USE AMENDMENT FILED	66230
Oct. 09, 2015	TEAS STATEMENT OF USE RECEIVED	
Apr. 28, 2015	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Apr. 25, 2015	EXTENSION 5 GRANTED	66230
Apr. 15, 2015	EXTENSION 5 FILED	66230
Apr. 15, 2015	TEAS EXTENSION RECEIVED	
Oct. 22, 2014	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Oct. 21, 2014	EXTENSION 4 GRANTED	66230
Oct. 16, 2014	EXTENSION 4 FILED	66230
Oct. 16, 2014	TEAS EXTENSION RECEIVED	
Apr. 22, 2014	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Apr. 21, 2014	EXTENSION 3 GRANTED	66230
Apr. 16, 2014	EXTENSION 3 FILED	66230
Apr. 16, 2014	TEAS EXTENSION RECEIVED	
Nov. 08, 2013	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Nov. 07, 2013	EXTENSION 2 GRANTED	66230
Oct. 02, 2013	EXTENSION 2 FILED	66230
Nov. 06, 2013	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66230
Oct. 02, 2013	TEAS EXTENSION RECEIVED	
Apr. 16, 2013	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Apr. 12, 2013	EXTENSION 1 GRANTED	98765
Apr. 12, 2013	EXTENSION 1 FILED	98765
Apr. 12, 2013	TEAS EXTENSION RECEIVED	
Oct. 16, 2012	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Aug. 21, 2012	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Aug. 21, 2012	PUBLISHED FOR OPPOSITION	
Aug. 01, 2012	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jul. 02, 2012	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 22, 2012	ASSIGNED TO EXAMINER	81840
Apr. 23, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 19, 2012	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: HETZEL, DANNEAN

Law Office Assigned: LAW OFFICE 106

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Oct. 16, 2015

Proceedings

Summary

Number of Proceedings: 2

Type of Proceeding: Opposition

Proceeding Number: [91224673](#)

Filing Date: Nov 02, 2015

Status: Pending

Status Date: Nov 02, 2015

Interlocutory Attorney: MIKE WEBSTER

Defendant

Name: Better Health, Inc.

Correspondent Address: MARK D. PASSLER
AKERMAN LLP
PO BOX 3188
WEST PALM BEACH FL , 33402-3188

Correspondent e-mail: ip@akerman.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
BETTER HEALTH	Opposition Pending	86407299	
BETTER HEALTH	Opposition Pending	86407293	

Plaintiff(s)

Name: Intrexon Corporation

Correspondent Address: David L. May
Nixon Peabody LLP
799 9th St. N.W., Ste. 500
Washington DC UNITED STATES , 20001

Correspondent e-mail: nptm@nixonpeabody.com , was.managing.clerk@nixonpeabody.com , larnold@nixonpeabody.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
BETTER	Ex Parte Appeal Pending	85979979	
BETTER	Fifth Extension - Granted	85514181	
BETTER DNA	Registered	85979086	4340104
BETTER DNA	Registered	85128569	4645392
BETTER DNA	Registered	85981670	4756539
BETTER MAB	Fifth Extension - Granted	85482864	
A BETTER WORLD THROUGH BETTER DNA	First Extension - Granted	86185709	
A BETTER WORLD THROUGH BETTER DNA	Published For Opposition	86975156	
A BETTER WORLD THROUGH BETTER DNA	Published For Opposition	86976890	
POWERING THE BIOINDUSTRIAL REVOLUTION WITH BETTER DNA	SU - Registration Review Complete	85599384	
POWERING BETTER PRODUCTS WITH NEXT GENERATION SYNTHETIC BIOLOGY	Fifth Extension - Granted	85368484	

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Nov 02, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Nov 02, 2015	Dec 12, 2015
3	PENDING, INSTITUTED	Nov 02, 2015	

Type of Proceeding: Opposition

Proceeding Number: [91219267](#)

Filing Date: Nov 10, 2014

Status: Terminated

Status Date: Jan 20, 2015

Interlocutory Attorney: CHERYL S GOODMAN

Defendant

Name: Dako Denmark A/S

Correspondent Address: JEFFREY A SMITH
MILLEN WHITE ZELANO & BRANIGAN PC
2200 CLARENDON BLVD STE 1400

ARLINGTON VA UNITED STATES , 22201-3360

Correspondent e-mail: docketing@mwzb.com; smithj@mwzb.com , culver@mwzb.com

Associated marks			
Mark	Application Status	Serial Number	Registration Number
A BETTER PATH	Abandoned - After Inter-Partes Decision	85747142	
Plaintiff(s)			

Name: Intrexon Corporation

Correspondent Address: DAVID L MAY
NIXON PEABODY LLP
401 9TH STREET, NW SUITE 900
WASHINGTON DC UNITED STATES , 20004

Correspondent e-mail: nptm@nixonpeabody.com , was.managing.clerk@nixonpeabody.com , lkrupka@nixonpeabody.com

Associated marks			
Mark	Application Status	Serial Number	Registration Number
BETTER	Ex Parte Appeal Pending	85979979	
BETTER	Fifth Extension - Granted	85514181	
BETTER DNA	Registered	85979086	4340104
BETTER DNA	Registered	85128569	4645392
BETTER DNA	Registered	85981670	4756539
BETTER MAB	Fifth Extension - Granted	85482864	
POWERING THE BIOINDUSTRIAL REVOLUTION WITH BETTER DNA	SU - Registration Review Complete	85599384	
POWERING BETTER PRODUCTS WITH NEXT GENERATION SYNTHETIC BIOLOGY	Fifth Extension - Granted	85368484	
A BETTER WORLD THROUGH BETTER DNA	First Extension - Granted	86185709	
A BETTER WORLD THROUGH BETTER DNA	Published For Opposition	86975156	
BETTER DNA	Published For Opposition	86425002	

Prosecution History			
Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Nov 10, 2014	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Nov 10, 2014	Dec 20, 2014
3	PENDING, INSTITUTED	Nov 10, 2014	
4	W/DRAW OF APPLICATION	Dec 15, 2014	
5	BD DECISION: SUSTAINED	Jan 20, 2015	
6	TERMINATED	Jan 20, 2015	

Attorney Docket No.: 048337-414

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of:

Application Serial No. 86/471,647

Mark: POWERING THE INDUSTRIAL EVOLUTION

Published in the Official Gazette: May 12, 2015

Intrexon Corporation,

Opposer,

V.

Uptake Technologies, LLC

Applicant.

Opposition No. _____

Appln. Serial No. 86/471,647

NOTICE OF OPPOSITION

Intrexon Corporation, a corporation organized and existing under the laws of Virginia, located and doing business at 1872 Pratt Drive, Suite 1400, Blacksburg, Virginia 24060 (hereinafter "**Opposer**"), believing that it will be damaged by Applicant's registration, hereby opposes registration of the mark shown in Application Serial No. 86/471,647, filed December 4, 2014 on an intent-to-use basis, under the Trademark Act of 1946, in the name of Uptake Technologies, LLC, a Delaware limited liability company with an address of record of 600 W. Chicago Ave., Suite 775, Chicago, ILLINOIS 60654 (hereinafter "**Applicant**"), published for opposition in the *Official Gazette* of May 12, 2015, for the mark POWERING THE INDUSTRIAL EVOLUTION.

The grounds for Opposition are as follows:

1. Opposer has established valuable rights and goodwill in the mark POWERING THE BIOINDUSTRIAL REVOLUTION WITH BETTER DNA in connection with goods and services relating to various fields and industries, including biotechnology, scientific research, medicine, and genetics, and application of such services to use in industries such as the environment, agriculture, and food industries (“**Opposer’s Mark**”).

2. Opposer is the owner of prior-filed, allowed U.S. Trademark Application No. 85/599,384 for the mark POWERING THE BIOINDUSTRIAL REVOLUTION WITH BETTER DNA for use with *Development of new technology for others in the field of genetics, therapeutics and biotechnology; Development of tools in the nature of biotechnological processes to regulate, modulate, and characterize cell function; Research and development services for others in the fields of biotechnology and genetics, namely, genetically engineering DNA, biological organisms, cells, viruses, pathogens, and special purpose cells for scientific, research, medical and laboratory use; Product development services for others in the biotechnology field* in Class 42, filed on April 16, 2012 (“**Opposer’s Prior Filed Application**”). A Statement of Use has been accepted in Opposer’s Prior Filed Application. A status copy of the application is attached as Exhibit A.

3. Upon information and belief, Applicant filed under Trademark Act § 1(b), U.S. Trademark Application No. 86/471,647 for the mark POWERING THE INDUSTRIAL EVOLUTION on December 4, 2014. The Application was filed for use with *electric sensors* in Class 9; *arranging and conducting business conferences* in Class 35; and *electronic monitoring and reporting of physical properties of an industrial asset using computers and sensors; data mining; electric sensor reading and data analysis; design and development of integrated data collection and wireless transmission hardware systems for equipment and for software applications associated with that equipment at industrial assets; data automation and collection service using proprietary software to evaluate, analyze and collect service data;*

providing on-line non-downloadable software for use in connection with each of the above services; providing on-line non-downloadable software for use in repair or maintenance of industrial assets; providing on-line non-downloadable software for use in industrial analytics; providing on-line non-downloadable software for use in industrial modeling in Class 42

(“**Applicant’s Mark**”). Applicant’s Mark remains on an intent-to-use basis.

4. Applicant’s goods and services are broadly described such that they are not limited to any particular industry or field of use, and would therefore be deemed to cover all fields of use, including Opposer’s.

5. Opposer has established prior rights in and to Opposer’s Mark in connection with goods and services in a broad range of industries, including but not limited to the fields of biotechnology, scientific research, medicine, and genetics, including application of such services to use in various industries such as the environment, agriculture, and food industries.

6. Through its continuous use of Opposer’s Mark, Opposer has expended significant revenue and resources in connection with marketing, sale, and rendering of the associated services and, through these efforts, has established valuable consumer recognition and goodwill therein.

7. Applicant’s use and registration of Applicant’s Mark will create a likelihood of confusion, mistake and/or deception among consumers, within the meaning of Trademark Act § 2(d), all to the detriment of Opposer.

8. Upon information and belief, Opposer avers that members of the relevant consuming public are likely to be confused, mistaken, or deceived as to the origin, sponsorship, or approval of Applicant’s goods and services to be marketed and offered under Applicant’s Mark and misled into believing that such goods are produced by, emanate from, or are in some way associated with Opposer, in light of Opposer’s prior use and prior filed application for the Opposer’s Mark, to the damage and detriment of Opposer and its reputation.

9. Upon information and belief, Opposer avers that it will be damaged by Applicant's registration of Applicant's Mark, as set forth in Applicant's U.S. Application No. 86/471,647, in the face of Opposer's Prior Filed Application, and continuous use of Opposer's Mark.

WHEREFORE, Opposer believes and avers that it is being and will continue to be damaged by registration of Applicant's Mark as aforesaid, and requests that said Application Serial No. 86/471,647 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

Opposer has appointed David L. May and Lauren J. Arnold, of the law firm of Nixon Peabody LLP, to prosecute this opposition proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

David L. May
NIXON PEABODY LLP
799 9th Street NW
Suite 500
Washington, DC 20001

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 50-2686.

Respectfully submitted,

By /Lauren J. Arnold/

David L. May

Lauren J. Arnold

NIXON PEABODY LLP

799 9th Street NW, Suite 500

Washington, DC 20001

(202) 585-8000 (Phone)

(202) 585-8080 (Facsimile)

dmay@nixonpeabody.com

larnold@nixonpeabody.com

was.managing.clerk@nixonpeabody.com

Counsel for Opposer

Dated: November 9, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **NOTICE OF OPPOSITION** was served on Applicant's attorney of record at her address of record as listed in the records of the U.S. Patent and Trademark Office this 9th day of November, 2015, by sending same, via first class mail, postage prepaid, to:

ERIC R. MORAN
MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 SOUTH WACKER DRIVE
31ST FLOOR
CHICAGO, ILLINOIS 60606-6709
UNITED STATES

/Lauren J. Arnold/

Lauren J. Arnold